
No. 04-21-00016

IN THE FOURTH COURT OF APPEALS
AT SAN ANTONIO, TEXAS

FILED IN
4th COURT OF APPEALS
SAN ANTONIO, TEXAS
01/10/2022 12:41:50 PM
MICHAEL A. CRUZ
Clerk

IN RE MICHELE CAREY GARCIA

Supplemental Appendix to
EMERGENCY PETITION FOR WRIT OF MANDAMUS
Emergency Relief Requested – Filed concurrently with this Writ of Mandamus

TO THE HONORABLE FOURTH COURT OF APPEALS:

NOW COMES Relator, Michele Carey Garcia, and submits this Supplemental Appendix to Emergency Petition for Writ of Mandamus, also requesting Emergency Relief filed concurrently with this Emergency Writ of Mandamus.

Respectfully submitted,

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**ATTORNEYS FOR RELATOR
MICHELE CAREY GARCIA**

APPELLATE RULE 52.3(J) CERTIFICATION

I certify that I reviewed the Emergency Petition for Writ of Mandamus that I filed on behalf of Michele Garcia on this day and I concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.

/s/: Adrian A. Spears II

Adrian A. Spears II

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document was served upon the below named according to the Texas Rules of Appellate Procedure on January 10, 2022 in the following manner.

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No. 04-21-00016

IN THE FOURTH COURT OF APPEALS

AT SAN ANTONIO, TEXAS

IN RE MICHELE CAREY GARCIA

EMERGENCY PETITION FOR WRIT OF MANDAMUS

Emergency Relief Requested – Filed concurrently with this Writ of Mandamus

SUPPLEMENTAL APPENDIX

TO THE HONORABLE JUDGE OF SAID COURT:

The following exhibits are incorporated by reference into the Emergency Petition for Writ of Mandamus:

- Exhibit H: Order on Plaintiff Rogelio Lopez, Jr.'s Request for Injunctive Relief in Cause No. 2021-CI-26103; *Rogelio Lopez, Jr. vs. Monica Alcantara, Michele Carey Garcia and Albert Whitby*; in the 225th District Court of Bexar County, Texas dated January 6, 2022 and received by Relator January 10, 2022.
- Exhibit I: Transcript excerpt of Honorable John Gabriel, Jr.'s ruling dated January 6, 2022 in Cause No. 2021-CI-26103; *Rogelio Lopez, Jr. vs. Monica Alcantara, Michele Carey Garcia and Albert Whitby*; in the 225th District Court of Bexar County, Texas.

EXHIBIT “H”

CAUSE NO. 2021-CI-26103

ROGELIO LOPEZ, JR,
Plaintiff

VS.

MONICA ALCANTARA,
MICHELE CAREY GARCIA and
ALBERT WHITBY,
Defendants

§ **IN THE DISTRICT COURT OF**
§
§
§ **BEXAR COUNTY, TEXAS**
§
§
§
§ **225th JUDICIAL DISTRICT**

ORDER ON PLAINTIFF ROGELIO LOPEZ, JR.'S REQUEST FOR INJUNCTIVE
RELIEF

This cause came to be heard on January 5, 2022. Plaintiff Rogelio Lopez, Jr. appeared and Defendants Monica Alcantara, Michele Carey Garcia, and Albert Whitby appeared. The Court heard Plaintiff's request for injunctive relief upon a petition verified by declaration against Defendants. This Court, having considered the evidence, the testimony, and arguments of counsel, is of the opinion that the Plaintiff is entitled to a permanent injunction against Defendants because of the following.

1. The court finds unless this Court immediately restrains the Defendants, the Plaintiff will suffer immediate and irreparable injury, for which there is no adequate remedy at law to give Plaintiff complete, final, and equal relief. More specifically, Plaintiff has shown and the court finds the following:

- a. The harm to Plaintiff is imminent because the Democratic Chair, Monica Alcantara, has abrogated her duties and must be compelled to act before the Democratic Primary Ballots are printed which, without Court intervention, will probably occur on January 13, 2022;

- b. This imminent harm will cause Plaintiff irreparable injury in that Plaintiff will have to face an opponent or opponents who would be on the ballot in violation of the Texas Election Code; and
- c. There is no adequate remedy at law which will give Plaintiff complete, final and equal relief.

2. The decision by Alcantara and the Democratic Party to place Garcia and Whitby's names on the primary ballot is not permitted pursuant to the Tex. Elec. Code, including Sections 141.032 (a), (c) & (e).

3. If an Application is submitted to the party chair, it is the duty of the party chair to "determine whether it complies with the requirements as to form, content, and procedure that it must satisfy for the candidate's name to be placed on the ballot." Tex. Elec. Code Section 141.032 (a), (c). "If an application does not comply with the applicable requirements, the authority shall reject the application." *Id.* section 141.032 (e). Now that the filing deadline has passed, Garcia and/or Whitby cannot amend, and Alcantara cannot accept, an amendment to the applications. Tex. Elec. Code Section 141.032 (g). The evidence shows the applications and/or petitions do not comply with the Texas Election Code rendering Garcia and Whitby ineligible to appear on the ballot. As a result, the applications should have been rejected. However, Alcantara may have failed to review the applications and petitions or perform her duties.

4. The Court issues this permanent injunction directing that Alcantara take all steps necessary to prevent the printing of the ballots for the office of Judge of the Justice of the Peace, Precinct 4, Place 1, that include the name of candidate Garcia and Whitby including withdrawing any certification or request she has made for printing of said ballots.

5. Defendant Alcantara and the Bexar County Democratic Party are PERMANENTLY ENJOINED from allowing either Defendant Garcia or Defendant Whitby

from appearing as candidates on the primary Ballot for the 2022 Democratic Party Primary for the office of Judge of the Justice of the Peace, Precinct 4, Place 1.

6. If Alcantara has previously certified the name of candidate Garcia and/or candidate Whitby to appear on the 2022 Democratic Party primary to the Bexar County Elections Commission, to the Secretary of State, or to any other person or entity, she is hereby restrained and enjoined and ordered to withdraw that certification and not recertify any of those names or allow those names to appear on the ballot for that office until the Court rules on the temporary and permanent injunctions sought herein.

IT IS, THEREFORE, ORDERED that the Defendant Monica Alcantara is required to fulfill her duties under the Texas Election Code and must reject the applications for the 2022 Democratic Party Primary for Bexar County Justice of the Peace, Precinct 4, Place 1 filed by Defendant Candidate Michele Carey Garcia and Defendant Candidate Albert Whitby.

The Court finds that both Defendant Garcia and Defendant Whitby's applications are defective pursuant to the Texas Election Code and accordingly must be rejected. Defendant

In the event the court's orders are not immediately provided to Plaintiff, Plaintiff will suffer irreparable harm as set out above, which cannot be remedied solely by the provision of money damages.

The court finds that a bona fide issue exists as to Plaintiff's rights to ultimate relief, including claims for declaratory relief and other available remedies.

Furthermore, it appears Plaintiff has no adequate remedy at law for prevention or redress which would result if these orders are not entered. The court takes judicial notice of the court file and pleadings submitted herein and incorporates same into this order.

The Order was granted because of the immediate nature and need to preserve the status quo and notice was provided to Defendants of the intent to seek this order. This order will become effective upon delivery to each defendant by hand delivery or by delivery by email and/or by facsimile.

The clerk shall forthwith, issue a writ of injunction in conformity with the law and the terms of this judgment.

Any request for relief that is not expressly granted is denied.

Signed this 6th day of January, 2021, at 4:05 o'clock, P.M.



HON. JUDGE JOHN GABRIEL PRESIDING

FORM APPROVED BY:

BY: /s/ Adam Poncio
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EXHIBIT “I”

REPORTER'S RECORD

ORIGINAL

VOLUME 1 OF 1 VOLUME

TRIAL COURT CAUSE NO. 2021-CI-26103

ROGELIO LOPEZ, JR.,)	IN THE DISTRICT COURT OF
Plaintiff,)	
)	
VS.)	BEXAR COUNTY, TEXAS
)	
MONICA ALCANTARA,)	
MICHELE CAREY GARCIA,)	
ALBERT WHITBY,)	
Defendants)	225TH JUDICIAL DISTRICT

JUDGE'S RULING ON TEMPORARY INJUNCTION

JANUARY 6, 2022**REQUESTED EXCERPT**

On the 6th day of January, 2022, the following proceedings came on to be heard in the above-entitled and numbered cause before the HONORABLE JOHN GABRIEL, Visiting Judge, held remotely via Zoom in the 225th District Court, San Antonio, Bexar County, Texas:

Proceedings reported by machine shorthand.

REBEKAH GARZA, CSR
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SAN ANTONIO, TEXAS 78268

DEPUTY COURT REPORTER
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MR. ALBERT WHITBY

DEFENDANT, APPEARING PRO SE

CHRONOLOGICAL INDEXVOLUME 1JANUARY 6, 2022

	<u>PAGE</u>	<u>VOL</u>
CAPTION	1	1
APPEARANCES	2	1
CHRONOLOGICAL INDEX	3	1
EXCERPT PROCEEDINGS	4	1
COURT'S RULING	4	1
END OF EXCERPT PROCEEDINGS	10	1
COURT REPORTER'S CERTIFICATE	11	1

E X C E R P T P R O C E E D I N G S

JANUARY 6, 2022

THURSDAY

(1:29 p.m. Before the Court.)

COURT'S RULING

THE COURT: Rebekah, let's get on record.
And this is -- for the record, this is Cause Number
2021-CI-26103, Rogelio Lopez, Jr. versus
Monica Alcantara and the other individuals in this case,
Ms. Michele Garcia and Mr. Albert Whitby. All right.
And the Bexar County Democratic Party.

You know, the Court -- I was almost
prepared to rule yesterday. I was advised, at least, to
review the mandamus order and one of the cases. And the
Court has done so.

The mandamus order, there were responses
by all sides. I read Mr. Poncio's motion. Mr. -- I
think Mr. Golando had filed a response, I know Mr. Garza
did. And the Court had ruled. I don't remember all
that much because that's not what this Court does. But
the Court ruled -- this Court -- and I'm reading from
the Fourth Court of Appeals order -- this Court
concludes relator has not shown himself to be entitled
to the relief sought.

And there was a question of what that

1 meant, or if it included -- the Court had considered the
2 merits of the case, and whether I could even act on
3 this, but I did review the -- the appellate decisions
4 that were provided to this Court. And, apparently,
5 court of appeals seemed to use this phrase when -- when
6 for some reason they don't rule on mandamus. In one of
7 the cases, I think it was the San Patricio County case,
8 they use the same language. It said, the relator has
9 not shown itself entitled to the relief sought. But the
10 Court goes on, it did not address the issues raised in
11 the original proceeding, discuss the arguments of the
12 parties, or explain the applicable law. And the Court
13 stated, our mandamus opinion did not address the merits
14 of the issues in this appeal and is not dispositive
15 here.

16 And the other case essentially says the
17 same thing. And this was the Twenty First Century
18 Holdings, the mandamus was issued in that case, and it
19 stated that, noting that failure to grant a petition for
20 writ of mandamus is not an adjudication, nor even
21 a comment on the merits, of the case in any respect,
22 including whether mandamus relief was available.

23 And the last case I reviewed said pretty
24 much the same thing. In the bottom line, it stated that
25 this Court's failure to grant a petition for writ of

1 mandamus is not an adjudication of, nor even a comment
2 on, the merits of the case in any respect, including
3 whether mandamus relief is available.

4 So the Court is clear. Apparently, they
5 use this phrase in all the -- I assume they do, because
6 I've seen it in three different court of appeals cases,
7 but the mandamus does not preclude this Court from
8 proceeding and ruling on the merits of the case.

9 And I did read the *In re Francis* case
10 that was provided to the Court. But the Court didn't
11 read the -- the Election Code before or after that the
12 legislature has -- has enacted and -- and is in the
13 Election Code.

14 So based on everything before the Court
15 that the Court has reviewed and the testimony received,
16 I'm going to find that the petitioner has met his burden
17 of proof, that the Election Code has been violated by
18 both parties. There's a question whether they could
19 amend their petition. Reviewing the Election Code, they
20 cannot. So there was a failure to abide by the Election
21 Code. There was a failure, I believe, by Mr. Whitby's
22 part to not provide the sufficient number of petitions
23 that he was required to.

24 So the Court is granting the injunctive
25 relief, but I'm not sure if this is a temporary or

1 permanent injunction. I assume it is at least a
2 temporary injunction. If everybody agrees it's
3 permanent, it can be appealable, but I believe it was
4 set as a temporary injunction and --

5 MR. LOPEZ: Judge, if I may?

6 THE COURT: Mr. Lopez, yes, sir.

7 MR. LOPEZ: There would be no new
8 evidence at a final hearing, so this should be the final
9 injunction. And the other reason that that's important
10 is because, as Ms. Callanen testified, next Tuesday they
11 start printing ballots.

12 And so at this point, I would
13 respectfully ask that this be a final adjudication on
14 the merits and that -- again, there's no purpose in
15 having a trial because we've done that.

16 THE COURT: Well, I feel I need -- well,
17 let me ask Mr. Golando. Do you agree, Mr. Golando?

18 MR. GOLANDO: So I don't think there's
19 any difference between the temporary and permanent
20 injunction in terms of appealability. They both would
21 be subject to mandamus, theoretically. The trial
22 requires 45 days notice. I -- I can waive that on
23 behalf of BCDP, but I can't waive that on behalf of
24 Mr. Whitby and Ms. Carey Garcia. So that's my position.
25 And I haven't discussed with my client about whether we

1 waive the trial. That's probably contingent on whether
2 or not other relief is sought, so --

3 THE COURT: Understood. Okay. And,
4 Mr. Garza, do you have any -- whether this should be
5 temporary or permanent?

6 MR. GARZA: It was my understanding,
7 Your Honor, that this was noticed as a temporary
8 injunction hearing. I understand the -- the
9 circumstances that Judge Lopez indicated. There
10 probably would not be any additional evidence. I don't
11 think the evidence is really contested. It's a matter
12 of law. But similarly to Mr. Golando, I have not
13 discussed this with my client, so I cannot take a
14 position today on that.

15 THE COURT: Okay. Well, I think it was
16 set for temporary injunction, but I understand based on,
17 you know, what needs to be done this month that --

18 MR. LOPEZ: The Election Code -- the
19 Election Code does give you specific authority in
20 election cases to grant injunctive relief, which is
21 slightly different on an expedited basis. And the other
22 concern is, a temporary order is not a final
23 determination on the merits, and the cases have said
24 that. And so that can create a problem later on.

25 So I think for the interest of

1 finality -- and then if they wish to appeal, they can
2 certainly do that, but, again, because we're on a
3 deadline of next -- it's either Tuesday or Wednesday, as
4 Ms. Callanen testified, the Election Code does give you
5 that authority, and I would respectfully request, so
6 that if the parties choose to appeal, they may do so.

7 THE COURT: And I understand some may
8 want to appeal or mandamus this Court. That's not a
9 problem. I understand that's a remedy available, but I
10 do think it's easier if I do make it a permanent
11 injunction. That does offer finality for any appeal or
12 mandamus that's requested. So I think it'd be better
13 for all of those -- these unusual cases -- these
14 election cases because there is a deadline that's
15 involved that's important to everyone.

16 So the Court will make it a permanent
17 injunction and allow the parties to proceed with any
18 other remedies they want with any courts -- with the
19 Fourth Court of Appeals, if necessary. I'll make it a
20 permanent injunction.

21 MR. GOLANDO: Thank you, Your Honor, for
22 the clarity.

23 THE COURT: Okay.

24 MR. LOPEZ: Thank you.

25 THE COURT: Anything else we need to put

1 on the record?

2 MR. GOLANDO: Who's going to draft the
3 order? Are you going to draft it? Et cetera, so --

4 THE COURT: I know Mr. Poncio did file,
5 so normally he would draft it.

6 MR. LOPEZ: We'll put that -- we'll put
7 that together, Your Honor.

8 MR. BRAUN: I'll -- I'll draft, Judge,
9 and I'll circulate to everyone.

10 THE COURT: Okay, Mr. Braun. Thank you
11 so much. All right. Anything else that we need to take
12 care of?

13 MR. GARZA: Nothing else, Your Honor.

14 THE COURT: All right. Everyone stay
15 safe, and y'all are excused at this time. Take care.

16 MR. GOLANDO: Thank you, Your Honor.

17 MR. LOPEZ: Thank you, Your Honor.

18 *(1:38 p.m. Court was adjourned.)*

19 *-*-*-*-*-*-*-*-*-*-*-*-*-*

20 *(END OF EXCERPT PROCEEDINGS)*

ORIGINAL

1 THE STATE OF TEXAS)

2 COUNTY OF BEXAR)

3 I, REBEKAH GARZA, Deputy Court Reporter
4 in and for the 225th District Court of Bexar County,
5 State of Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription of
7 all portions of evidence and other proceedings requested
8 in writing by counsel for the parties to be included in
9 this volume of the Reporter's Record, in the
10 above-styled and numbered cause, all of which occurred
11 in open court remotely via Zoom and were reported by me.

12 I further certify that this Reporter's
13 Record of the proceedings truly and correctly reflects
14 the exhibits, if any, offered and/or admitted by the
15 respective parties.

16 I further certify that the total original
17 costs for preparation of this Reporter's Record is
18 \$110.50 and was paid by Mr. Jose Garza.

19 WITNESS MY OFFICIAL HAND this the day
20 10th of January, 2022.

21
22 *Rebekah Garza*

23 Rebekah Garza, Texas CSR #11871

24 Expiration Date: 7/31/23

25 Deputy Court Reporter-Bexar County, TX

P.O. Box 680381

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Associated Case Party: Rogelio Lopez

Name

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